

European court may prove sticking point as round two begins

PM's vow to take UK out of jurisdiction will overshadow talks agenda of citizens' rights, financial claims and Irish border

Jennifer Rankin Brussels
Dan Roberts

Fights over the European court of justice (ECJ) are expected to overshadow the second round of Brexit talks as both sides brace for a clash that could hamper progress on citizenship and money.

David Davis, the Brexit secretary, will meet the European Union's chief negotiator Michel Barnier this morning at the European commission headquarters to set up the second round of formal talks.

Over three and a half days, the two sides will hold detailed discussions on all aspects of the divorce treaty: protecting citizens' rights, money and the Irish border. They will also discuss how to ensure a smooth transition on Brexit day - a set of topics known as "other separation issues", where the ECJ looms large.

Brussels wants to ensure that, when Britain leaves the EU on 29 March 2019, individuals and companies do not fall into a legal black hole; for example, goods in transit or ongoing British court cases at the ECJ. Negotiators aim to guarantee, for example, that a consignment of car parts ordered before Brexit day could still be subject to EU product rules - and the ECJ - even if it reached its intended destination after Britain has left the EU.

Defining the role of the ECJ will be one of the most sensitive issues of the Brexit divorce treaty, as Theresa May has vowed to take the UK out of the jurisdiction of the Luxembourg court. She also wants to ensure that any disputes over EU citizens' rights are settled by British courts, not judges in Luxembourg.

Despite concern in Westminster that the government's opposition to a future role for the court has limited its room for manoeuvre, three position papers published last week recommended Davis to reject any role for the ECJ after Brexit.

European diplomats fear that the UK is continuing to tie itself to an uncompromising position and are expecting it to push back strongly on the court, as both sides map out their differences in detail.

Davis is expected to call for both sides to get down to business as he arrives for the second round. Whitehall sources say he will set out citizens' rights as his

Cake for Labour, too

The shadow business secretary has described Labour's Brexit policy as "have our cake and eat it", while conceding it would be difficult to keep single market and customs union benefits without major concessions.

Rebecca Long-Bailey said maintaining access to, or even membership of, the customs union and single market could prove problematic. Asked on BBC's Sunday Politics about single-market membership after leaving the EU, she said the party must "respect the result of the referendum, respect the will of the people in terms of having greater control over our laws, greater control over our borders".

"If we could negotiate membership of the single market whilst dealing with free movement and dealing with the other issues then that would be great, but I think that's probably unlikely and we'll have to be looking at a more flexible approach that maintains the benefits that we currently have in the single market whilst perhaps not being a member."

On customs union, Long-Bailey, pictured below, said: "We want to maintain the benefits that we currently have within the customs union - we want to have our cake and eat it, as do most parties in Westminster."

She said Britain should try to keep the benefits of the customs union while being able to negotiate its trade deals. Asked if such an approach was untenable, she said: "That's the whole point of negotiations. Not to be untenable, but to negotiate the position. Our end goal is to maintain the benefits we currently have as part of the customs union and the single market."

"The machinery that we use to do that, whether it's through outside agreements or negotiating some form of amendment settlement as part of membership, that's a moot point, quite frankly. But we need to make sure that we have the same benefits."

Peter Walker

personal priority for the round, with a push to lift uncertainty for the 3 million EU citizens living in the UK and 1 million Britons living in other EU countries.

"We'll be getting into the real substance," Davis is expected to say. "Protecting the rights of all our citizens is the priority for me going into this round and I'm clear that it's something we must make real progress on."

On the eve of the talks, sources in Brussels were also more optimistic about avoiding a total breakdown in negotiations after the UK formally recognised financial obligations to the EU in a written statement to parliament last week.

The prime minister had made similar pronouncements before, but the statement to MPs and peers carried weight in Brussels. Diplomats had feared a collapse in talks after Boris Johnson, the foreign secretary, caused confusion with his statement that the EU should "go whistle" for the "extortionate" sums demanded.

Discussions on the politically charged issue of the Irish border will be led by Sabine Weyand, Barnier's deputy, and Oliver Robbins, the permanent secretary of the Department for Exiting the EU. They will meet regularly through the week, with the aim of keeping the talks on track.

But this next round of talks is unlikely to be definitive: EU officials expect to map out their differences with the British rather than strike any final agreements.

Further talks are expected in late August and the autumn before a Brussels summit in late October, where EU leaders will decide whether the UK has made "sufficient progress" on the Brexit divorce to allow trade talks to go ahead.

Chris Patten, the former Tory chairman, warned yesterday that the Brexit deadlock represented one of the bleakest moments in British post-war history.

"I think it's the worst time since Suez, though maybe even worse, than that because Suez was the end of an era, the end of our colonial aspirations," he told ITV's Peston on Sunday. "The European Union was our replacement for that colonial role and thanks to the calamitous errors of two Conservative prime ministers in a row, who thought they could manage the unmanageable - the English nationalist right wing of the Conservative party - we're in this hell of a mess."

clear support for some limitations on freedom of movement that are already within the government's control."

A separate study by researchers at King's College London, Rand Europe and Cambridge University found little appetite for the government's "no deal is better than a bad deal" approach to the talks, and voters much keener to compromise.

"Our research is one of the most rigorous assessments to date of what the public wants from Brexit, and it clearly shows that the British people do not wish to head over a cliff edge and leave the EU on World Trade Organisation rules - they want a proper deal," said Jonathan Grant, from King's College London. "The British public are sophisticated enough to understand that they can't 'have their cake and

eat it', and will need to make and accept compromises to reach a deal."

The team also found that supposed red-lines on immigration and leaving the European court of justice were far less important to voters than the government.

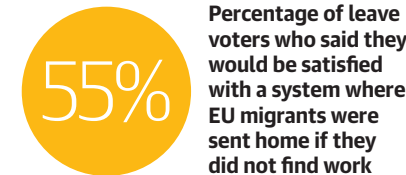
"While our results do show a desire to control movement of people to some extent, we find that this stems from a concern about managing demand for public services, rather than from wanting to limit freedom of movement per se," wrote the team, led by Charlene Rohr of Rand.

"Our analysis indicated that, on average, respondents would prefer a future relationship in which the UK is able to make and interpret all laws itself, but this was considered less important than maintaining free trade or being able to negotiate new trade deals independently."

Polls also show overall support for Brexit dipping sharply as talks deteriorate, leading some campaigners to argue that the government must invert its "no deal is better than a bad deal" slogan.

"It's increasingly clear that no Brexit is better than a bad Brexit: no one voted to become poorer or have their rights reduced," said Todd. "The government has committed to delivering the 'exact same benefits' out of Brexit for the UK and its people - that means guaranteeing citizens' rights as they stand, and right now the government is failing on that measure by its own standards."

Efta membership Perhaps the most radical but obvious solution would be to seek membership of the European Free Trade Association,



Migration Single market access is worth trade-off - polls

Dan Roberts
Brexit policy editor

A majority of Brexit supporters would be happy to swap European free movement for single market access, according to two studies that suggest ways for Britain to pull back from the brink in negotiations.

Amid calls for the government to loosen its opposition to free movement to protect the economy when Britain leaves the EU, the research shows compromise would result in far less popular backlash than is commonly assumed. Campaigners against hard Brexit claim it also vindicates their new slogan "no Brexit is better than a bad Brexit".

In a previously unpublished poll conducted by YouGov three weeks after the general election, 1,600 adults were asked how important they thought it was to reduce immigration from the EU.

Framed as an isolated issue, the study confirmed public opinion was still deeply divided a year on from the Brexit referendum: 72% of leave voters rated immigration either as very important or the most important issue in the talks, while 74% of remain voters ranked it less important or not important at all.

However, when they were asked to consider free movement as a trade-off for single market access - a principle that was described last week as "indivisible" by the EU's chief negotiator, Michel Barnier

- British voters appear far more pragmatic, and united.

Leave voters would be evenly split if the government tried to keep full access to the single market in exchange for allowing a version of free movement that limited welfare benefits for the newly arrived. Twice as many voters would be satisfied with this option as not, even though it goes no further than the deal struck by David Cameron before the referendum.

But support for a trade-off soars when voters are offered the option of other limitations on free movement that are used by some countries in the single market. Asked to consider a system where EU migrants were sent home if they did not find work, 55% of leave voters said they would be satisfied with this, versus only 25% who would be unhappy. There was slightly less support for an "emergency brake" option to control surges in immigration.

Best For Britain, a pressure group opposed to hard Brexit, which commissioned the research, said the result proved it was wrong to assume the referendum vote meant Britain wished to ban free movement whatever the cost.

"Our polling shows that a huge majority of people across the country support freedom of movement if they too can keep their own rights to live, work and study abroad," said Eloise Todd, its chief executive. "The picture is much more nuanced than the government has portrayed, with



The Mays attend church yesterday. The PM's opposition to the European court of justice is likely to overshadow Brexit talks this week
Photograph: Rupert Hartley

Brexit threat to safe and secure food supplies

← continued from page 1

and costs from customs delays could see significant price rises.

This could have particular repercussions for poorer people, given the already greatly increased use of food banks following seven years of austerity policies.

It says EU subsidies for farmers, while sometimes criticised, have kept supplies stable. The government has guaranteed these will stay in place until 2022, but there is "silence" about what will happen next. "If UK agricultural markets are radically deregulated, and all production subsidies ended, they will once again become chronically prone to volatilities of supplies and prices," the authors warn.

"That pivotal fact has been forgotten by many who have become accustomed to the relative stability in prices and supplies that European and British consumers experienced since the 1960s."

The report highlights the threat to agriculture and the food industry from uncertainty about migrant workers, noting that a third of the workforce in food manufacturing, the largest single UK manufacturing sector, comes from overseas. "Given the importance of UK food supply, the silence from government on the labour question is astonishing," the authors say.

Another concern identified in the report is potentially weakened food standards post-Brexit, especially if a trade deal with the US mandated the import of hormone-injected beef, and chicken that had been washed in chlorine.

Millstone said that while the proposed "great repeal bill" would initially transplant EU protections into UK law, it would also allow ministers to change these without parliamentary debate or consent, with a government committed to reducing regulations. "This will hamper not just food safety but environmental protection, employment protections," he said.



Philip Hammond on BBC's Andrew Marr Show yesterday, when he said the cabinet was coming together on EU issues

Mary Creagh, a Labour MP who supports the Open Britain pressure group, said the report "sets out the truly worrying consequences of a hard Brexit". She added: "A hard Brexit will be bad for British families and bad for British farmers. The government needs to protect our agricultural industry, and stop devastating price rises for British people already feeling the pinch."

Tom Brake, the Liberal Democrats' Brexit spokesman, said: "The Conservatives seem utterly overwhelmed by the scale of the task and are incapable of dealing with the consequences of the extreme Brexit they have chosen."

A spokeswoman for the Department for Environment, Food and Rural Affairs said the aim was for a Brexit deal that would keep trade with the EU "as frictionless as possible".

She added: "But we also want to provide stability for the sector when we leave the EU, which is why the repeal bill will make sure the laws and rules we have will, so far as possible, still apply, and why our agriculture bill will make sure farmers can continue to compete domestically and on the global market."

Simon Jenkins, page 23 →

Options The missions possible and improbable on the table

Dan Roberts

On the eve of the first full week of Brexit talks, there has never been more uncertainty about what Britain wants from the process. As a former cabinet secretary, Gus O'Donnell, pointed out at the weekend: "Cabinet members haven't yet finished negotiating with each other, never mind the EU." Officially, the government remains wedded to a "hard" strategy of leaving the single market, customs union and European court of justice, while threatening to abandon talks if full trade access is not guaranteed. But even UK officials doubt this is possible and everyone is looking for a plan B. What are the options for a softer Brexit?

Efta membership Perhaps the most radical but obvious solution would be to seek membership of the European Free Trade Association,

tion, which we were in between 1960 and 1972. Designed as a stepping stone toward EU membership, this prosperous club of Norway, Iceland, Switzerland and Liechtenstein could now serve the same role in reverse. It would give us access to an internal market of four nearby economies, and a host of existing global trade deals. Joining just Efta would require freedom of movement, but only among its four members.

"It could provide an elegant and relatively swift solution to some of the challenges facing the UK in securing post-Brexit trade agreements with non-EU partners," concludes new LSE research. "The combination of continuity and flexibility could prove very valuable."

More contentious would be using Efta to access the European Economic Area (EEA) and the wider single market of the EU, as Norway does. This option involves accepting EU rules on freedom of movement, regulation and payments, with little influence. But if these are the price of single market access either way, Efta at least provides a framework.

A customs union

A less onerous alternative to the EEA might be to seek more limited access to European goods markets by striking a new customs deal with the EU, as Turkey has done. Not to be confused with the EU's own internal customs union, which is reserved for members, this would guarantee the tariff-free frictionless trade sought by both Tories and Labour, but (possibly) without all the burdens of full single market

Vince Cable (below) and Tony Blair have both recently predicted that Brexit may be abandoned entirely



participation. A customs union would come with a cost, especially in terms of Britain's freedom to strike new international trade deals. However, Treasury research suggests the benefits of continued access for manufacturing supply chains far outweigh the unproven allure of far-flung new export markets. Proponents point out the Department for International Trade might be able to seek new deals in the service sector instead.

Associate status

Some Tories would like to see Britain seek associate membership of key regulatory agencies, such as Euratom and the European Medicines Agency, to soften the blow of leaving the EU sector-by-sector. At the very least this is likely to involve abandoning Theresa May's opposition to the jurisdiction of the European court of justice. Associate membership would also only swell the size of Britain's divorce bill. But replicating decades of bureaucracy from scratch without any international co-operation may cost more.

No Brexit

Vince Cable and Tony Blair have both recently predicted that Brexit may yet be abandoned entirely. If Britain chooses the softer Brexit routes above, it would have to accept most of the political compromises of EU membership anyway. A few years of pressing our face to the glass like Norway may be just what it takes to change Britain's mind.

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GALA FOR GRENFELL

Stars from across the world of dance will join Arlene Phillips in a gala to raise funds for those whose lives have been seriously affected by the Grenfell Fire tragedy.

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Arlene Phillips CBE

Guests include:
Akram Khan

The Royal Ballet featuring **Edward Watson**
Matthew Bourne's New Adventures

The Mariinsky Ballet's **Xander Parish**
Ballet Black
Rambert Dance Company
Adam Garcia
English National Ballet
Zoo National
Drew McOnie's Jekyll & Hyde

with more performers to be announced...

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